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TRACK ONE: RESEARCH PAPER

Cluster 2: Peace, Security and Human Rights

Transitional Justice in Sierra Leone: A Critical Analysis

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ABSTRACT

This paper seeks to problematize contemporary forms of transitional justice by contextualizing dominant theory and praxis within the broader project of liberal peacebuilding. In doing so, it emphasizes the extent to which critiques of liberal peacebuilding can provide a useful framework for understanding transitional justice, particularly in the sense that contemporary peacebuilding operations focus on top-down rule of law initiatives that lack local ownership and popular support. As a result, there is a significant disconnect between the aims, logics, and methods of transitional justice and the expectations and desires of local populations that is related to a similar disconnect in peacebuilding more generally. This significantly undermines the efficacy of current transitional justice mechanisms in post-conflict situations and is severely detrimental to the likelihood that these can be considered successful by any relevant standards. These arguments are explored in the context of the transitional justice mechanisms adopted in Sierra Leone—specifically the Special Court and the Truth and Reconciliation Commission—where, it is claimed, the underlying assumptions and significant shortcomings that define contemporary peacebuilding processes led to the implementation of transitional justice mechanisms that were conceptually incoherent, compromised for internationally motivated political purposes, and culturally and contextually inappropriate. This has serious implications for the long-term success of Sierra Leone's peacebuilding projects that must be addressed in a way that emphasizes the country's specific conflict and post-conflict realities, local ownership, and emancipatory forms of justice.

KEYWORDS: *Peacebuilding, Transitional Justice, Rule of Law, Sierra Leone, Critical Theory, Peace and Conflict*

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The promotion of transitional justice has become a central element of contemporary peace processes. Although this is often seen as a positive development, it raises a number of important questions: what assumptions define the post-conflict justice models commonly promoted by the international community? Whose interests are these intended to serve? And is it possible to identify a disconnect between internationally designed systems of justice and the needs of local populations? Addressing these questions, this paper seeks to problematize the theoretical underpinnings and dominant praxis of transitional justice. Using Sierra Leone as a case study, it argues that transitional justice mechanisms designed and implemented in post-conflict contexts should be understood within the broader project of liberal peacebuilding, in which rule of law initiatives, because of their assumed relationship with peace, security, and development, play a central role. As a result of the problematic assumptions inherent in such projects, the forms of transitional justice that were adopted in Sierra Leone were conceptually unstable, problematically politicized, and contextually inappropriate. By advancing the interests of international actors, they led to a situation in which local needs and expectations were fundamentally disconnected from the processes and objectives of the liberal peace. These failures suggest broader underlying problems with the theory and praxis of contemporary transitional justice. As a result, the utility of such mechanisms in post-conflict situations, at least in their present form, must not be taken for granted.

This paper addresses these themes in the following way. After a discussion of important theoretical considerations, Part I contextualizes the contemporary theory and praxis of transitional justice within the broader project of post-conflict liberal peacebuilding. The centrality of the rule of law in liberal peace processes is emphasized, and the way this frames modern transitional justice mechanisms is subsequently explored. Part II applies these concepts to Sierra Leone, examining how the transitional justice mechanisms implemented following that country's civil war were conceptually incoherent, compromised for internationally motivated political purposes, and culturally and contextually inappropriate. In doing so, it highlights specific shortcomings of the Special Court for Sierra Leone (SCSL) and the country's Truth and Reconciliation Commission (TRC), arguing that the problems that characterized each suggest broader failures of transitional justice in contemporary peacebuilding processes. Conclusions and valuable avenues for future research are outlined in Part III.

Broadly speaking, the theoretical framework employed in this study seeks to synthesize two separate, yet largely complementary, fields of critical literature: works addressing the liberal peace and critiques of contemporary legal theory. In relation to the former, the arguments of two authors are particularly useful. David Chandler claims that the movement away from externally imposed state-building in favour of methods that work within existing institutions is detrimental to self-governance as it distances international actors from responsibility while minimizing space for local agency and resistance.[1] Similarly, Oliver Richmond argues that the universalizing pretences of the liberal peace commonly ignore or co-opt local needs, processes, and understandings of peace, thus precluding more bottom-up, inclusive, contextually appropriate, and viable forms of post-conflict peacebuilding. Furthermore, he posits, the liberal peace can be understood, in reference to the Foucauldian concepts of

[1] Chandler, David, "The Liberal Peace: Statebuilding, Democracy and Local Ownership," in *Rethinking the Liberal Peace: External Models and Local Alternatives*, by Shahrbanou Tadjbakhsh ed. Abingdon: Routeledge, 2011, 77-88.

disciplinarity, governmentality, and biopower, as a project of normalizing foreign, illiberal 'others' based on unproblematized assumptions about security, development, and peace and conflict.[2] These have important implications for conceptualizing the role of 'hybrid' models of transitional justice within broader trends that define liberal peacebuilding, as they suggest that common attempts to engage with the local are superficial, self-interested, and insufficient. Truly hybrid systems of justice, following Richmond's arguments, must move beyond normalization processes and engage with the local-local and the everyday; the failure to do so will fundamentally undermine their appropriateness and chances of success.[3]

From critical legal theory, this study adopts the arguments that legal systems based on liberal notions of justice often reinforce existing—and commonly unjust—power relations; that rights-based discourses, rather than encouraging equality and empowering disenfranchised groups, serve to legitimize otherwise unpopular social norms and institutions; that the common assumption that the law is neutral, apolitical, objective, and universal is both theoretically and practically problematic; and that more inclusive and emancipatory understandings of justice must supplement overly rigid Western notions of logical positivism, modernity, agency, responsibility, and right and wrong with concepts that take subject positionality, cultural sensitivity, various epistemologies, and independent context into account.[4] These theoretical underpinnings represent a significant departure from much of the academic literature addressing transitional justice, which can be situated, in general terms, within a liberal legalist framework that conceptualizes law as both a vehicle and prerequisite for liberal transitions.[5] Critical legal theory allows for an appropriate problematization of this framework, and its implications for transitional justice will be explored in greater detail below.

I: TRANSITIONAL JUSTICE, THE RULE OF LAW, AND THE LIBERAL PEACE

Before these arguments can be addressed, it is first necessary to contextualize contemporary transitional justice mechanisms within liberal peacebuilding processes. For the purposes of this paper, the extent to which the liberal peace promotes security through top-down, internationally driven institution-building and development projects is particularly important. This security-centrism can be seen to dominate transitional justice initiatives, which the United Nations conceptually situates within broader rule of law projects.[6] In doing so, it frames the rule of law and transitional justice as inseparable tools for "ensuring accountability and reinforcing norms, building confidence in justice and security institutions, and promoting gender equality" in post-conflict contexts.[7] This is necessary, it is argued, as societies affected by weak and corrupt institutions, widespread oppression,

[2] Richmond, Oliver, *A Post-Liberal Peace*, Abingdon: Routeledge, 2011.
[3] Ibid.
[4] Ward, Ian, *Introduction to Critical Legal Theory: Second Edition*, London: Cavendish Publishing, 2004; Boyle, James, "The Politics of Reason: Critical Legal Theory and Local Social Thought," *University of Pennsylvania Law Review* 133 (4) 1984-1985: 685-780; Kennedy, Duncan, "Legal Education and the Reproduction of Hierarchy," *Journal of Legal Education* 32 (4) 1982: 591-615; and Gabel, Pater and Paul Harris, "Building Power and Breaking Images: Critical Legal Theory and the Practice of Law," *NYU Review of Law and Social Change* 11 (3) 1982/1983: 369-412.
[5] Teitel, Ruti G., *Transitional Justice*, Oxford: Oxford University Press, 2000.
[6] Guidance Note of the Secretary General, "United Nations Approach to Transitional Justice," March 2010.
[7] Report of the Secretary General, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," UN Document S/2011/634, 12 October 2011, 3.

underdevelopment, criminality, and little or no legal accountability "pose significant threats to international peace and security".[8] Establishing the rule of law is seen as necessary for addressing the underlying causes of conflict—with a special emphasis on issues pertaining to social justice and economic grievances—as well as ensuring peace, security, and development.[9] Importantly, such a program is not unique to the UN, as the promotion of rule of law initiatives for the purpose of peacebuilding is the stated objective of several governmental development programs, intergovernmental organizations (IGOs), and non-governmental organizations (NGOs).[10] These concepts have also become prevalent in academia, as the relationship between justice, the rule of law, and conflict management, along with the institutionalization of the rule of law as a prerequisite for the benefits of peace, security, and development based on democratization and marketization, has been stressed in recent scholarship.[11]

Situating transitional justice within this liberal peacebuilding framework, it becomes possible to analyze the extent to which the shortcomings of the latter can be applied to the former. Chandra Sriram, for example, demonstrates how many critiques of democratization and marketization—both key elements of the liberal peace—can also be applied to transitional justice: it exacerbates tensions and increases the likelihood of a return to conflict; it threatens reconciliation and rehabilitation by demanding accountability; and it institutionalizes animosities and rivalries.[12] The relationship between peace and the rule of law,[13] as well as peace and transitional justice,[14] is highly contested; transitional justice, which seeks to be at once retributive (accountability/normative-centric) and restorative/rehabilitative (victim-centric),[15] can be counter-productive to the promotion of peace, as many authors not only doubt the efficacy of criminal trials, but also question the rationale that truth-telling is linked

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[8] Ibid, 4.

[9] Ibid; Report of the Secretary General, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," UN Document S/2004/616, 23 August 2004; Report of the Secretary General, "Uniting our Strengths: Enhancing United Nations Support for the Rule of Law," UN Document S/2006/980, 14 December 2006; and Guidance Note of the Secretary-General (2010).

[10] Barnett, Michael et al., "Peacebuilding: What Is In a Name?" *Global Governance* 13 (1) 2007: 35-58.

[11] Call, Charles T. ed., *Constructing Justice and Security after War*, Washington: United States Institute of Peace, 2007; Call, Chares T. And Vanessa Wyeth eds. *Building States to Build Peace*, London: Lynne Reinner Publishers, Inc., 2008; Hurwitz, Agnès G. and Reyko Huang eds., *Civil War and the Rule of Law: Security, Development, Human Rights*, Boulder: Lynne Reinner Publishers, Inc., 2008; Paris, Roland, *At War's End: Building Peace after Civil Conflict*, Cambridge: Cambridge University Press, 2004, 151-233; Stromseth, Jane, David Wippman and Rosa Brooks, *Can Might Make Rights? Building the Rule of Law After Military Interventions*, Cambridge: Cambridge University Press, 2006; Voorhoeve, Joris, *From War to the Rule of Law: Peace Building After Violent Conflicts*, Amsterdam: Amsterdam University Press, 2007; Jallow, Justice Hassan B., "Justice and the Rule of Law: A Global Perspective," *International Lawyer* 43 (1) 2009: 77-81; Tolbert, David and Andrews Solomon, "United Nations Reform and Supporting the Rule of Law in Post-Conflict Societies," *Harvard Human Rights Journal* 19 (1) 2006: 29-62; and Turner, Catharine, "Delivering Lasting Peace, Democracy and Human Rights in Times of Transition: The Role of International Law," *The International Journal of Transitional Justice* 2 (2) 2008: 126-151.

[12] Sriram, Chandra, "Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice," *Global Society* 12 (4) 2007: 279-291.

[13] Peterson, Jenny H., "'Rule of Law' Initiatives and the Liberal Peace: The Impact of Politicized Reform in Post-Conflict States," *Disasters* 34 (S1) 2010: S15-S39.

[14] Zartman, I. William and Victor Kremenyuk eds., *Peace Versus Justice: Negotiating Forward- and Backward-Looking Outcomes*, Lanham: Rowman & Littlefield Publishers, 2005; and Snyder, Jack and Leslie Vinjamuri, "Trials and Errors: Principles and Pragmatism in Strategies of International Justice, *International Security* 28 (3) 2003/2004: 5-44.

[15] Report of the Secretary General (2004); Report of the Secretary General (2006); and Guidance Note of the Secretary-General (2010).

to reconciliation, justice, the construction of authoritative historical accounts, public education, reform, democracy, and the prevention of future crimes.[16] Furthermore, the security-centric conflation of transitional justice with the rule of law ignores the extent to which the relationship between the two, rather than being complementary and mutually reinforcing, is commonly defined by compromise, contextually dependent fluctuation, ambiguous uncertainty, and transformation in post-conflict situations.[17]

As Sriram notes, another important critique of the liberal peace can be applied to transitional justice: that it is insensitive to local context, ignoring political and judicial histories, cultural worldviews, and the needs and desires of those affected by past crimes.[18] Framing transitional justice within rule of law projects requires the adoption of certain forms and understandings of justice. Importantly, a genealogy of contemporary understandings of transitional justice suggests that they have been decontextualized from their spatio-temporal roots and applied to post-conflict situations regardless of local culture or the nature of the crimes under consideration. This is problematic for two reasons: first, it ignores the extent to which the success of the mechanisms and practices that were specifically designed, for example, to address the covert crimes of Latin American authoritarianism or apartheid-era South Africa is highly debated;[19] and second, it detaches these from their origins and, by focusing on 'lessoned learned' and 'best practice,' narrativizes them into legal models that assume a universal, unquestioned discursive legitimacy.[20] This conceptual depoliticization of transitional justice is especially noticeable when its supposedly transcendent norms become recontextualized in its contacts with the local, where transitional justice mechanisms are commonly destabilized, resisted, and reformulated.[21]

Indeed, the UN acknowledges the dangers of universalizing mechanisms of transitional justice, rejecting "one-size-fits-all formulas and the importation of foreign models" in favour of "national assessments, national participation and national needs and aspirations".[22] Simultaneously, however, it also stresses that the success of transitional justice depends upon its ability to "ensure a common basis in international norms and standards".[23] This disconnect has been highlighted by a number of theorists. James Cockayne, for example, frames hybrid courts as international degradation ceremonies in which local moral understandings are transformed to cohere with international norms.[24] Similarly, Augustine Park argues that the

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[16] Clark, Janine Natalya, "Transitional Justice, Truth and Reconciliation: And Underexplored Relationship," *International Criminal Law Review* 11 (2) 2011: 241-261; and Mendeloff, David, "Truth-Seeking, Truth-Telling, and Postconflict Peacebuilding: Curb the Enthusiasm?" *International Studies Review* 6 (3) 2005: 355-380.

[17] Leebaw, Bronwyn Anne, "The Irreconcilable Goals of Transitional Justice," *Human Rights Quarterly* 30 (1) 2008: 95-118; McAuliffe, Padraig, "Transitional Justice and the Rule of Law: The Perfect Couple or Awkward Bedfellows?" *Hague Journal on the Rule of Law* 2 (2) 2010: 127-154; McAuliffe, Padraig, "UN Peacebuilding, Transitional Justice and the Rule of Law in East Timor: The Limits of Institutional Responses to Political Questions," *Netherlands International Law Review* 58 (1) 2011: 103-135; and Teitel (2000).

[18] Sriram (2007).

[19] See, for example, Graybill, Lyn and Kimberly Lanegran, "Truth, Justice, and Reconciliation in Africa: Issues and Cases," *African Studies Quarterly* 8 (1) 2004: 1-18.

[20] Arthur, Paige, "How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice," *Human Rights Quarterly* 31 (2) 2009: 321-367; and Teitel, Ruti G., "Transitional Justice Genealogy," *Harvard Human Rights Journal* 16 (1) 2003: 69-94.

[21] Shaw, Rosalind et al. eds., *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, Stanford: Stanford University Press, 2010.

[22] Report of the Secretary General (2004).

[23] Ibid.

[24] Cockayne, James, "Hybrids or Mongrels? Internationalized War Crimes Trials as Unsuccessful Degradation Ceremonies," *Journal of Human Rights* 4 (4) 2005: 455-473.

notions of transitional justice inherent in the liberal peace pathologize cultural difference, treating diversity as a problem to be corrected for the creation of a modern liberal society. This, according to Park, is done in a number of forms: assimilation aims to construct cultural uniformity; accommodation is employed to depoliticize difference through multiculturalism; and deployment seeks to co-opt the local into the enforcement of rule of law mechanisms.[25] This teleological discursive dichotomization of supposedly rational, modern understandings of justice—conceived in relation to peace-as-governance—with backward, illiberal tradition demonstrates the applicability of Richmond's Foucauldian critiques of the liberal peace to dominant transitional justice mechanisms.[26] Furthermore, following Chandler and Richmond's respective arguments, it suggests that the emphasis placed by the UN on incorporating local actors, processes, and traditions into its transitional justice mechanisms[27] can be understood as a means of legitimization and disavowal; only those that adhere to the discursive parameters defined by international norms are engaged with, thereby promoting local ownership while minimizing the discursive space available for dissent.[28]

Understanding transitional justice within the broader project of liberal peacebuilding, therefore, allows for an appropriate problematization of its contemporary theory and praxis. Doing so reveals that the purportedly universal benefits of transitional justice, as commonly understood in relation to the rule of law, should not be taken for granted. Internationally driven transitional justice mechanisms are not value-neutral, apolitical, or even internally stable; indeed, they are so under-conceptualized that some authors have rejected the notion that transitional justice constitutes a coherent field on the grounds that it masks such a variety of (sometimes incompatible) normative underpinnings.[29] The remainder of this paper will apply these concepts to the transitional justice mechanisms implemented in Sierra Leone as a means of exploring their potential ramifications.

II: PROBLEMATIZING TRANSITIONAL JUSTICE IN SIERRA LEONE

As this section seeks to analyze how Sierra Leone's internationally imposed systems of justice were conceptually incoherent, politically compromised, and contextually inappropriate, it is first necessary to emphasize the extent to which these can be understood in relation to rule of law initiatives and security-centric peacebuilding orthodoxy.[30] Sierra Leone's transitional justice process, particularly its narrativization of morality and the atrocities committed by the Revolutionary United Front (RUF), was directed by the openly articulated assumption that the country's conflict was caused by societal collapse, a crisis of modernity, greed and the competition over valuable resources (especially diamonds), and the absence or inadequacy of pre-war rule of law mechanisms. According to this logic, the

[25] Park, Augustine S.J., "Peacebuilding, the Rule of Law and the Problem of Culture: Assimilation, Multiculturalism, Deployment," *Journal of Intervention and Statebuilding* 4 (4) 2010: 413-432.
[26] Richmond, Oliver, "The Rule of Law in Liberal Peacebuilding," in *Peacebuilding and Rule of Law in Africa: Just Peace?* by Chandra Sriram et al. eds. Abingdon: Routeledge, 2011.
[27] Report of the Secretary General (2011).
[28] Chandler; and Richmond (2011). Also see Andrieu, Kora, "Civilizing Peacebuilding: Transitional Justice, Civil Society and the Liberal Paradigm," *Security Dialogue* 41 (5) 2010: 537-558.
[29] Bell, Christine, "Transitional Justice, Interdisciplinarity and the State of the "Field" or "Non-Field"," *International Journal of Transitional Justice* 3 (1) 2008: 5-27.
[30] Park, Augustine S.J., "Consolidating the Peace: Rule of Law Institutions and Local Justice Practices in Sierra Leone," *South African Journal on Human Rights* 24 (1) 2008: 536-564; and Sriram, Chandra, "(Re)building the Rule of Law in Sierra Leone: Beyond the Formal Sector?" in Sriram et al. eds.

institutionalization of such mechanisms, in coherence with liberal peacebuilding rationale, would therefore address the root causes of conflict and prevent its recurrence.[31] This reasoning is highly contested in the scholarly literature on the origins of the Sierra Leone Civil War, and, following Susan Willett's argument that the security-development nexus in Africa is rooted in unproblematized assumptions about African conflict,[32] ignores how much of the violence was, despite its brutality, distinctly political, modern, and directed towards rational ends.[33] Following the arguments explored in Part I of this paper, Sierra Leone's conflict was pathologized and framed as something to be corrected by supposedly modern liberal forms of order and stability, and it is within this conceptual framework that its transitional justice mechanisms must be considered.

As Sierra Leone's transitional justice process involved both a hybrid court and a TRC, each of these deserves to be analyzed in turn. Regarding the political nature of the former, there is a considerable amount of debate surrounding the extent to which the SCSL upheld the principles of fairness, impartiality, and due process. Indeed, some authors claim that these were observed to an almost damaging extent, as, for example, the Civil Defence Forces (CDF) trail—and particularly the indictment of Samuel Hinga Norman—threatened the Court's local popularity and legitimacy.[34] It is, however, possible to identify a number of ways in which Sierra Leone's transitional justice mechanisms were politically compromised. Primarily, the Court's mandate of holding accountable "those who bear the greatest responsibility", along with the decision to only prosecute crimes committed after November 30, 1996,[35] has been criticized as conceptually vague, arbitrary, politically influenced, or dictated by budget restraints. Issues of who *was* charged—referring to either the amnesty provided in the Lomé Peace Accord or individuals such as Norman and Issa Sesay, the RUF leader who cooperated with demobilization—as well as who *was not* charged—including President Ahmad Tejan Kabbah, junior commanders or those who directly committed atrocities, corporate profiteers who benefited from the trade of goods that sustained the conflict, foreign leaders such as Muammar Gaddafi, and members of intervening actors such as Executive Outcomes (a private military company), the Economic Community of West African States Monitoring Group (ECOMOG), or the UN—have been criticized on similar grounds.[36] Furthermore, the inclusion or omission of certain indictments in different trials can

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[31] Jalloh, Charles Chernor, "Special Court for Sierra Leone: Achieving Justice?" *Michigan Journal of International Law* 32 (3) 2011: 395-460; Kelsall, Tim, "Politics, Anti-Politics, International Justice: Language and Power in the Special Court for Sierra Leone," *Review of International Studies* 32 (4) 2006: 587-602; Kieh, George Klay Jr., "State-building in Post-Civil War Sierra Leone," *African & Asian Studies* 4 (1/2) 2005: 163-185; and Cockayne.

[32] Willett, Susan, "New Barbarians at the Gate: Losing the Liberal Peace in Africa," *Review of African Political Economy* 32 (106) 2005: 569-594.

[33] Richards, Paul, *Fighting for the Rainforest: War, Youth & Resources in Sierra Leone*, Oxford: James Currey Publishers Ltd., 1996. Also see: Keen, David, *Conflict and Collusion in Sierra Leone*, Oxford: James Currey Publishers Ltd., 2005; Reno, William, *Warlord Politics and African States*, London: Lynne Reinner Publishers, Inc., 1998; Williams, Paul, "Peace Operations and the International Financial Institutions: Insights from Rwanda and Sierra Leone," *International Peacekeeping* 11 (1) 2004: 103-124; and Kaplan, Robert, "The Coming Anarchy," *Atlantic Magazine*, February 1994.

[34] Arzt, Donna E., "Views on the Ground: the Local Perceptions of International Criminal Tribunals in the Former Yugoslavia and Sierra Leone," *Annals of the American Academy of Political and Social Science* 603 (1) 2006: 226-239; and Sriram, Chandra, "Wrong-Sizing International Justice? The Hybrid Tribunal in Sierra Leone," *Fordham International Law Journal* 29 (3) 2006: 472-506.

[35] Special Court for Sierra Leone, "About," http://www.sc-sl.org/ABOUT/tabid/70/Default.aspx.

[36] Dougherty, Beth K., "Right-Sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra Leone," *International Affairs* 80 (2) 2004: 311-328; Howarth, Kathryn, "The Special Court for

be seen as politically motivated. In some instances, such as the refusal to consider gender-based crimes in the CDF trial, these compromises had serious psychological effects on victims, demonstrating the extent to which normative-centric retribution was valued over rehabilitation.[37] Similarly, the pursuit of international norms and jurisprudence resulted in a number of instances in which fairness and due process—especially in relation to the rights of the accused and problems of precedent and *nullum crimen sine lege* in landmark rulings on child soldiers, gender-oriented crimes, and joint criminal enterprise—were sacrificed, rendering the Court's neutrality and conceptual coherence doubtful.[38]

This relationship between justice and the needs, values, and objectives of different actors also highlights the supposed hybridity of the SCSL. Hybrid courts are commonly assumed to have a number of benefits. They are, unlike domestic courts, apparently detached from political interests and more likely to adhere to universal standards of justice. They are also seen as preferable to strictly international courts as they are better able to gain access to witnesses, interact with local populations, (re)construct local judicial capacities, and promote a rights-oriented local culture of accountability by demonstrating that no persons or actions are outside of the rule of law.[39] The hybridity of Sierra Leone's transitional justice system is, however, questionable. The SCSL did not charge any of its defendants under the Sierra Leonean legal system, instead focusing on violations of international norms, jurisprudence, and humanitarian law (war crimes and crimes against humanity). Such a disparity brings into question the extent to which hybridity is merely a means of gaining local legitimacy for enforcing international norms.[40] Following the arguments presented above, the UN's efforts to establish community outreach projects, incorporate local civil society into justice mechanisms, and assist local actors in the development of professional skills can be seen as an attempt to implicate local actors in a project that seeks to transform illiberal states, peoples, traditions, and modernities in coherence with unproblematized understandings of security and development.[41] The success of this, however, has been limited, as a large portion of Sierra Leoneans see the court as driven by and serving foreign interests, sentiments that were exacerbated by the transfer of Charles Taylor to The Hague.[42]

Sierra Leone—Fair Trials and Justice for the Accused and Victims," *International Criminal Law Review* 8 (3) 2008: 399-422; and Jalloh.

[37] Kelsall, Michelle Staggs and Shanee Stepakoff, "'When We Wanted to Talk About Rape': Silencing Sexual Violence at the Special Court for Sierra Leone," *International Journal of Transitional Justice* 1 (3) 2007: 355-374.

[38] Jordash, Wayne and Scott Martin, "Due Process and Fair Trial Rights at the Special Court: How the Desire for Accountability Outweighed the Demands of Justice at the Special Court for Sierra Leone," *Leiden Journal of International Law* 23 (3) 2010: 585-608; Jordash, Wayne and Penelope Van Tuyl, "Failure to Carry the Burden of Proof: How Joint Criminal Enterprise Lost its Way at the Special Court for Sierra Leone," *Journal of International Criminal Justice* 8 (2) 2010: 591-613; Rose, Cecily, "Troubled Indictments at the Special Court for Sierra Leone: The Pleading of Joint Criminal Enterprise and Sex-based Crimes," *Journal of International Criminal Justice* 7 (2) 2009: 353-372; Howarth; and Jalloh.

[39] Office of the United Nations High Commissioner for Human Rights, "Rule of Law Tools for Post-Conflict States: Maximizing the Legacy of Hybrid Courts," UN Document HR/PUB/08/2, 2008; and Sriram (2006).

[40] Kendall, Sara, "'Hybrid' Justice at the Special Court for Sierra Leone," *Studies in Law, Politics and Society* 51 (1) 2010: 1-27.

[41] OHCHR (2008).

[42] Call, Charles T., "Is Transitional Justice Really Just?" *Brown Journal of World Affairs* 11 (1) 2004: 101-113; and McAuliffe, Padraig, "Transitional Justice in Transit: Why Transferring A Special Court for Sierra Leone Trial to The Hague Defeats the Purposes of Hybrid Tribunals," *Netherlands International Law Review* 55 (3) 2008: 365-393.

Perhaps most significant, however, is the extent to which these internationally driven norms ignored Sierra Leone's post-conflict contextual specificities. As Tim Kelsall argues, this became manifest in a number of ways: the charges for enlisting child soldiers presupposed a universal understanding of "childhood" that had little socio-cultural resonance in Sierra Leone; the concepts of command responsibility and joint criminal enterprise reflected inappropriate notions of military hierarchy and ignored Sierra Leonean forms of social organization and mobilization; and the SCSL's legalistic framework was divorced from local ontologies, epistemologies, and notions of agency, responsibility, evidence, truth, and magic.[43] Furthermore, the argument that transitional justice promotes adherence to universal conceptions of rights and justice overlooks the degree to which, in Sierra Leone, contemporary understandings of these are grounded in a constant renegotiation of post-conflict social realities.[44] Countering such claims, many argue that engaging with local traditions will reinforce oppressive social practices and recreate the conditions of conflict;[45] however, given that most Sierra Leoneans have no access to the formal systems of justice, working with local traditions in ways that provide space for the needs, values, and desires of various actors to be articulated is necessary for the success of the country's transitional justice mechanisms.[46]

Many of these problems also defined the country's TRC, the utility of which is highly contentious for two reasons. First, its complementarity with the SCSL is subject to a considerable amount of debate. Whereas a number of commentators, including the UN, see each as promoting different, yet equally essential, aspects of post-conflict justice,[47] others highlight how issues such as sequencing and the sharing of findings and witnesses can lead to tension and local scepticism.[48] Furthermore, Sierra Leone's TRC has been critiqued as culturally inappropriate; following the arguments presented in Part I of this study, the benefits of truth commissions were problematically assumed and universalized, ignoring local practices of rehabilitation based on forgiveness and forgetting. As a result, the type of justice promoted by Sierra Leone's TRC was seen as incomplete and unsatisfactory—or worse, detrimental to peace and rehabilitation—by affected communities and individuals.[49] Its

[43] Kelsall, Tim, *Culture Under Cross-Examination: International Justice and the Special Court for Sierra Leone*, New York: Cambridge University Press, 2009. Also see: Hoffman, Danny, "The Meaning of a Militia: Understanding the Civil Defence Forces of Sierra Leone," *African Affairs* 106 (425) 2007: 639-662; and Park (2008).

[44] Archibald, Steven and Paul Richards, "Converts to Human Rights? Popular Debate about War and Justice in Rural Central Sierra Leone," *Africa* 72 (3) 2002: 339-367.

[45] Fanthorpe, Richard, "On the Limits of Liberal Peace: Chiefs and Democratic Decentralization in Post-War Sierra Leone," *African Affairs* 105 (418) 2006: 27-49.

[46] Sriram, (2011).

[47] Report of the Secretary General (2004); Report of the Secretary General (2006); Guidance Note of the Secretary-General (2010); Schabas, William, "A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone," *Criminal Law Forum* 15 (1/2) 2004: 3-54; and Schabas, William, "The Relationship Between Truth Commissions and International Courts: The Case for Sierra Leone," *Human Rights Quarterly* 25 (4) 2003: 1035-1066.

[48] Boister, Neil, "Failing to Get to the Heart of the Matter in Sierra Leone?" *Journal of International Criminal Justice* 2 (4) 2004: 1100-1117; Dougherty, Beth K., "Searching for Answers: Sierra Leone's Truth & Reconciliation Commission," *African Studies Quarterly* 8 (1) 2004: 39-56; Evenson, Elizabeth M., "Truth and Justice in Sierra Leone: Coordination between Commission and Court," *Columbia Law Review* 104 (3) 2004: 730-767; Kelsall, Tim, "Truth, Lies, Ritual: Preliminary Reflections of the Truth and Reconciliation Commission in Sierra Leone," *Human Rights Quarterly* 27 (2) 2005: 361-391.

[49] Millar, Gearoid, "Assessing Local Experiences of Truth-Telling in Sierra Leone: Getting to 'Why' in Qualitative Case Study Analysis," *International Journal of Transitional Justice* 4 (3) 2010: 477-496; Millar, Gearoid, "Local Evaluations of Justice through Truth Telling in Sierra Leone: Postwar Needs and Transitional

benefits, like those of the SCSL, should therefore not be taken for granted; instead, the failures of both should be viewed as manifestations of more deeply rooted problems that define contemporary transitional justice. The unwillingness to acknowledge these as such will only increase the likelihood of similar problems in the future.

III: CONCLUSIONS AND AVENUES FOR FUTURE RESEARCH

This paper has sought to problematize the role of transitional justice in contemporary peacebuilding operations as a means of demonstrating the extent to which the concept, given its service of international interests and widespread equation with the rule of law, is both practically and theoretically unstable. In doing so, it has explored the transitional justice mechanisms adopted in Sierra Leone, arguing these were incoherent, inherently politicized, and culturally inappropriate. Rather than assuming that these failings are specific to Sierra Leone, it is important to question whether or not they suggest more general failings of transitional justice mechanisms in peacebuilding processes. If, as this paper has argued, they do, then it is essential to devise new forms of transitional justice that cohere with local contexts, contingencies, ontologies, epistemologies, everyday needs and desires, and understandings and traditions of justice.

Although an examination of such alternatives is beyond the scope of this paper, these nevertheless merit future scholarly consideration. Both Richmond and Roger Mac Ginty have explored local alternatives to liberal peacebuilding, although the applicability of their arguments to transitional justice, as well as the extent to which such alternatives can be equated to emancipation, deserves further analysis.[50] In this regard, it is important not to romanticize local systems of justice over internationally backed liberal counterparts, assume their authenticity or utility, or ignore how understandings and practices of justice are, and have historically been, tied to certain interests and power relations.[51] Such arguments pose serious difficulties for the possibility of identifying space for emancipatory forms of transitional justice, as no understanding of justice can be seen as apolitical, disinterested, or value-neutral. This reality, however, perhaps only increases the necessity of exploring creative alternatives to contemporary transitional justice mechanisms by questioning unproblematized hierarchies, both locally and internationally, and locating new discursive space for previously voiceless actors and perspectives. Such an endeavour is essential if the conceptual and practical utility of transitional justice is to be maintained.

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